

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

FRANKIE E. LEE,

Plaintiff,

vs.

Civil Action 2:12-CV-537
Judge Graham
Magistrate Judge King

MICHAEL DEWINE, et al.,

Defendants.

ORDER

On August 20, 2012, the United States Magistrate Judge recommended that this action be dismissed. *Report and Recommendation*, Doc. No. 6. This matter is now before the Court on plaintiff's *Receipt, Response*, Doc. No. 8 ["*Plaintiff's Response*"].

This action is apparently intended as a challenge to the calculation of plaintiff's state court sentence. The Magistrate Judge reasoned that, to the extent that plaintiff intends by this action to challenge the duration of his sentence, his only remedy is a writ of habeas corpus. *Report and Recommendation*, p. 2, citing *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973). The Magistrate Judge went on to conclude that, because plaintiff had not demonstrated exhaustion of his state court remedies, the action could not proceed as a habeas corpus action under 28 U.S.C. § 2254. *Id.*

Plaintiff's Response does not object to the reasoning of the Magistrate Judge or to the recommendation that the action be dismissed. Instead, plaintiff asks only that, "upon completion of plaintiffs remedy phase, (State), [he] retain the right to enter this District Court, In good standings." *Id.* [sic].

This Court agrees that, for the reasons articulated by the Magistrate Judge, the action must be dismissed. Moreover, the Court

cannot, at this juncture, assure plaintiff that any future litigation instituted by plaintiff in this Court can proceed.

The *Report and Recommendation*, Doc. No. 6, is **ADOPTED AND AFFIRMED.**

This action is hereby **DISMISSED.**

The Clerk shall enter **FINAL JUDGMENT.**

Date: September 7, 2012

s/James L. Graham
James L. Graham
United States District Judge